

Explanatory Note

Issued by the Authority of the Minister for Communications, Urban Infrastructure, Cities and the Arts

Telecommunications Act 1997

Telecommunications (Network Exemption—TransACT Upgraded VDSL Networks) Instrument 2012 (Amendment No.1 of 2022)

Authority

Subsection 141A(1) of the *Telecommunications Act 1997* (the Act) conferred power on the Minister to exempt specified local access networks from the wholesale Layer 2 bitstream requirements of section 141 of the Act. The *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* repealed Part 7 of the Act containing s141. However, subitem 27(1) of Schedule 1 to the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* (TLA Act) provides for existing exemption instruments, including their associated conditions, granted under subsection 141A(1) of Part 7 of the Act, to continue to have effect as if they had been made under subsection 144(1) of the Act.

Subsection 144(1) of the Act confers power on the Minister to exempt specified local access networks from the wholesale-only requirements of section 143 of the Act.

Subsection 144(4) provides that the related exemption instrument may be unconditional or subject to such conditions (if any) as are specified in the instrument.

This Instrument is not a legislative instrument for the purposes of the *Legislation Act 2003* (see subsection 144(6) of the Act).

Purpose

The purpose of this amendment is to extend the duration of the exemption granted through the *Telecommunications (Network Exemption—TransACT Upgraded VDSL Networks) Instrument 2012* to TPG Telecom Ltd (ACN 096 304 620) (TPG) for its VDSL2 network in the Australian Capital Territory.

Background

TransACT was granted exemptions under Part 7 and Part 8 of the Act for its VDSL networks by the then Minister on 10 April 2012 through the *Telecommunications (Network Exemption – TransACT Upgraded VDSL Networks) Instrument 2012*, taking effect from 12 April 2012

until the 'Designated Day' – which was then 1 July 2018 under s577A of the Act. TransACT¹ is now a subsidiary of TPG, and TPG is the ultimate controller of these networks.

On 22 June 2020, the Minister extended the duration of the exemptions until the earlier of the day immediately after:

- a functional separation undertaking or a deemed standard functional separation undertaking relating to local access lines forming part of a TransACT Upgraded VDSL Network first comes into force for the purposes of Part 8 of the Act; and
- the second anniversary of the day on which the TLA Act received the Royal Assent (which occurred on 25 May 2020), effectively making the backstop date the 25 May 2022.

On 17 December 2022, TPG requested an extension to duration of the exemptions. In accordance with subsection 144(5) of the Act, the Minister wrote to the Chairs of the Australian Competition and Consumer Commission (ACCC) and the Australian Communications and Media Authority (ACMA) to seek their comments on TPG's extension request. The ACCC and the ACMA separately provided advice regarding TPG's request. Neither the ACCC nor the ACMA opposed the extension. The ACMA noted that it is desirable to enable continuity of service to affected TPG Telecom customers in the period until the Functional Separation Undertaking has been considered. The ACCC supported the proposed 12 month extension and also proposed an alternative structure for extension, that being to extend the period by the lesser of 12 months or 6 months from the date that the ACCC accepts a functional separation undertaking under Part 8 from TPG. These views were considered, however, for administrative simplicity, a simple extension of the backstop date was preferred.

The Department of Infrastructure, Transport, Regional Development and Communications consulted (on behalf of the Minister) on the extension request with the public through a request for submissions through the Department's website. Response to the consultation was limited.

The Minister subsequently decided to extend the maximum duration of the exemptions by an additional 12 months (ie. 25 May 2023).

Clause 1 – Name of Exemption Instrument

Clause 1 provides that the name of the Instrument is the *Telecommunications (Network Exemption—TransACT Upgraded VDSL Networks) Instrument 2012 (Amendment No.1 of 2022)*.

¹ TransACT was acquired by iiNet in 2011. Subsequently, iiNet (and TransACT as its subsidiary) was acquired by TPG telecom in 2015. In July 2020, a merger between TPG and Vodaphone was completed.

Clause 2 – Commencement

Clause 2 provides that the instrument will commence on the day that it is signed by the Minister.

Clause 3 – Amendments

Clause 3 notes that the *Telecommunications (Network Exemption—TransACT Upgraded VDSL Networks) Instrument 2012* (incorporating amendments up to 22 June 2020) is amended as set out in the Schedule to the Instrument.

Schedule – Amendments

Item 1 of the Schedule replaces the second reference date at paragraph (b) of the cessation clause in the Instrument (which had previously been 25 May 2022), with a replacement reference date being the end of on 25 May 2023.

The effect of this amendment is that the maximum duration of the exemption instrument (and the networks covered by it) is extended by a further 12 months. The new cessation provision provides for cessation on the earlier of two days occurring in the future, being the earlier of:

- the date when either a functional separation undertaking; or a deemed standard functional separation undertaking covering local access lines forming part of a Victorian Very Small Scale Network or an ACT Very Small Scale Network, first comes into force for the purposes of Part 8 of the Act;
- the end of the 25 May 2023.

Item 2, Item 3 and Item 4 of the Schedule make minor amendments to the exemption instrument by removing references to the now repealed sections 141 and 141A(1) of the Act. These changes will remove ambiguity on the face of the instrument relating to repealed Part 7.